

Neutral Citation: [2018] ECC Lei 3

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

IN THE MATTER of PICKWELL ALL SAINTS

CHANCELLOR BLACKETT-ORD

The Feast of St Barnabas the Apostle

11 June 2018

JUDGMENT

1. I have before me a Petition dated 23 October 2017 for a confirmatory faculty approving the covering of the north-aisle roof of All Saints, Pickwell with a non-metallic roofing membrane called Sarnafil, which had been done without faculty consent.
2. The case has certain difficulties and there are lessons to be drawn from it, so I propose to deal with the matter fairly fully.
3. All Saints is a Grade I rural church mostly of 13th or 14th century in the Decorated style. Much, if not all, of its roof, and in particular the roof of the north aisle with which I am concerned, was lead-covered.

4. During September 2016 the greater part of the lead on the north aisle was stolen. Emergency steps were taken to keep the church dry, and immediate consideration was given to the question of the roof repair.

5. Pickwell is in many ways a typical Leicestershire village church. It is of outstanding architectural quality as its listing status indicates. It is one of the centres of village life. A resident called Sally Brook Shanahan has put in a letter of evidence stating that she has been on the electoral role and a resident of Pickwell for 33 years and she says:

“Our small rural village with its spirit of “community” is a wonderful place in which I have had the privilege to live for more than half of my life. Pickwell Church and the Village Hall are our only community assets...The proceeds raised from the village fete are divided equally between the Church and the Village Hall. This spirit of togetherness is life enhancing and is what, in my view, village life is all about”.

6. Although there are only 32 on the electoral role, and although in 2016 the Church had been suffering an interregnum for two or three years, the acting treasurer Alan Smith in his letter of 29 April 2018 states that the Parish Share given by Pickwell is (per head of the population) three times the average for the Deanery, at £32.76 per head. He has prepared a schedule showing that the total income of the Church for the eight years prior to 2016 averaged at £16,483, and the regular annual expenditure £11,103. The financial position of the Church is not good, but neither is it desperately bad.

7. At this time there was no incumbent but there were two churchwardens, Charles Campbell and Martin Watts, supported by an active PCC, although I believe that only Mr Alan Smith, the acting treasurer, is the only PCC member who has now given a statement in favour of the Petition apart from the petitioners.

8. The notes to the accounts show that the insurance claims were £7,500 in respect of the theft from the north-aisle roof and £7,500 for the consequential damage to the organ. Both of these sums seem to have been paid to the PCC fairly promptly.

9. The Secretary to the DAC, the Rev Rupert Allen, was told informally of the theft in late 2016, and received a formal request from Charles Campbell on behalf of the PCC by email timed at 13.40 on 2 March 2017. Mr Campbell stated that to re-roof in lead would cost £12,840 plus architect's fees; to re-roof in "composite material" would be £7,760 plus architect's fees. He asked:

"We need to know if it is obligatory to use lead for the roof replacement material and if so who has mandated this...With due consultation between our church architect, the contractor and our PCC a composite covering could be applied to the North Aisle roof within a few weeks...".

10. He received a response to his email less than two hours later and it answered his question;

"The normal approach from Historic England...is that ideally lead should be replaced with lead. However, where lead has been stolen they are prepared to consider within limits, replacement in other materials...The preferred option is terne-coated stainless steel...One or two suggestions of alternative materials of a GRP or plastic origin have been proposed but the heritage bodies are not supportive...

The DAC is reluctant to recommend to the Chancellor the use of an alternative material... which Historic England would not support as the Chancellor may well take the view that the Faculty should not be granted...".

11. Still on the same day, Mr Campbell replied to Mr Allen thanking him for his very prompt reply and stating:

“My co-warden at Pickwell has witnessed a stainless steel sheet being installed on a church roof and declared it to be an abomination. I have been in a church with a stainless steel roof when the service had to be abandoned during a rain storm because of noise. The cost of fitting a stainless steel roof is almost the same as fitting lead. For these reasons we have discounted the use of stainless steel...May I ask that the DAC consider the use of composite material at Pickwell Church as an experiment in the use of 21st century technology”.

12. This request was answered by Mr Allen seven days later:

“If the PCC wishes the DAC...to consider an alternative roof covering, the PCC will need to carefully and fully set out its case/justification for the request. It would probably be helpful if that justification had the support of the Church Architect – Bryan Martin. Historic England will certainly need a robust argument...”

13. I believe that Mr Campbell did not immediately involve the church architect. Probably because he felt that the DAC was fairly set in its opposition to a composite non-metal material, and he wrote to the Bishop of Leicester for assistance on 16 March 2017:

“I wish to submit to the DAC a request for a faculty; that the repair to Pickwell Church north aisle roof be made with composite material. In the submission I would seek to include the support of...our church architect.

I shall be grateful for your support”.

14. Evidently the Bishop referred the matter back to the DAC because on 20 March Mr Allen wrote again to Mr Campbell in terms which I consider to be important because he was in my view setting out the position clearly and correctly:

“Whilst I understand that the PCC may not wish to put terne-coated stainless steel on the roof, I have explained to you that Historic England whose responsibility it is to advise on heritage matters is unlikely to support alternative coverings – especially if they are of a plastic origin. Nevertheless, the PCC is entitled to submit an application for the DAC to consider – though Historic England will have to be consulted – so that the matter can be

passed through to the Chancellor with the DAC's advice as to whether the proposals are appropriate for a listed church building".

15. After this email was sent, things began to go wrong. Mr Campbell, who may have been unwell or elderly, drops out of the picture and the cause was taken up by his co-churchwarden, Mr Watts. The witness statement of the latter helpfully takes the form of a "timeline" and he records this under "April":

"Having been informed categorically by the DAC office that no membrane material had ever been authorised or used within the Diocese of Leicester or any other Grade I Listed Church of England churches in the country, I commenced a search to verify that information...

I quickly discovered that the information I had been given was incorrect and that there were a number of examples across the country...It was very informative to discover from SIKA Sarnafil that its own membrane material had in fact been authorised with a Faculty with the Diocese of Leicester in 2008...".

16. I would find it slightly surprising if this was right and the DAC office had stated that Sarnafil had never been used. Mr Allen does not deal with the point in his evidence. There is no email from the DAC stating what Mr Watts suggests. On the contrary, I have already remarked that I find the DAC's emailed comments to Mr Campbell had been clear and accurate. The email of 20 March 2017 had also made clear that, "the PCC is entitled to submit an application for the DAC to consider...so that the matter can be passed through to the Chancellor..." Already two months had passed without this being done.
17. As I understand the matter, there had one been one faculty application in Leicester Diocese for the use of Sarnafil, and this was allowed in 2008 by my predecessor, for All Saints Loughborough.

18. On 23 May 2017 Martin Watts wrote to Bishop Inge, as the “key individual within the Church of England” responsible for working with Heritage England, and explained:

“We are being thwarted by the internal debate and confusion that seems to exist within the decision-making body of the Diocese of Leicester/the Church of England – hence this direct letter to yourself seeking clarification and guidance please...

“The correct solution is “composite” so successfully used by very many Free Churches over now many years – it is tried, tested, long lasting and very competitively priced.

“However it is not allowed I am told by the Church of England – is this correct, and if so why not?”.

But Mr Watts received nothing back but an acknowledgement.

19. On or slightly before 7 July 2017 he submitted an application as a “List B matter” to the Archdeacon. On the same day he sent an email which was copied to Bryan Martin, the church architect, stating:

“I wish to confirm for the record that we now have the insurance money of £7,500 in our PCC Bank Account ready to proceed with our chosen SIKA Sarnafil contractor, Derwent Roofing Ltd....

“You also advised that a “full Faculty” is required even for this urgent repair work, and as such the roof specification must be prepared by our qualified architect/surveyor Bryan Martin.

“Therefore may I ask you, Bryan, whether you will be prepared to carry out that work on our behalf, with both the PCC’s chosen material of Sarnafil membrane, and/or stainless steel...”.

Bryan Martin the church architect answered the same day:

“I will of course help you with this, although I can’t say I am delighted with the idea of fitting PVC to your lovely church.

“I have used Sarnafil...many times before, but only on my new-built projects – and I don’t think it will be that straightforward here...

“However I wouldn’t want to spend time working up a proposal for either plastic or steel until you have something in writing from the Diocese confirming that one or other of these is acceptable in principle. And whatever the DAC says, I strongly suspect that Historic England won’t support either option...”.

20. In June 2017 was published “Metal theft from historic buildings” by Historic England, and that document reflects that organisation’s discouragement of synthetic materials. After a discussion of lead, stainless steel, copper and zinc they deal with “other materials”:

“Historic England will not support the use of synthetic non-metal materials as roof coverings on listed buildings, unless there are highly exceptional circumstances.

“These materials do not replicate the appearance of lead and because they are visually inappropriate they are highly likely to harm the significance of historic buildings. Their technical performance and longevity in the demanding environment of a roof on a historic building has not been proven”.

Reasons are then given for this being the Historic England building view.

21. On 10 July 2017 the Archdeacon of Leicester returned the Pickwell application:

“The proposal is not a matter prescribed in List B. It cannot therefore be undertaken without a faculty. You may, if you wish, submit a petition for a faculty to the Consistory Court”.

22. In short, by mid-July, Mr Watts had been told that his remedy was to present a petition for a faculty permitting the use of Sarnafil. He knew that actually the

only time that Sarnafil had been proposed for faculty permission within the diocese, at All Saints, Loughborough, the application for its use had succeeded. Time was going by. But unfortunately that no petition from him or the PCC was in contemplation.

23. On 18 August 2017 Mr Watts wrote to his Archdeacon and Area Dean, with copies to two Bishops, the Lord Lieutenant and numerous others, stating that they had done the work anyway:

“The enclosed photos show the “temporary repair” to the north aisle roof at **All Saints Pickwell** that was very successfully completed yesterday.

“The decision to proceed with our overdue roof repair was unanimously taken by the Pickwell PCC at a meeting on 24 July...”.

24. I was informed of the matter and made my own enquiries soon afterwards. On 22 August Bryan Martin saw Mr Watts’ letter and his response in my view absolves him from any responsibility:

“To my surprise, a copy of a letter from Martin Watts to the Archdeacon and the Area Dean dropped through my letterbox today, confirming they have fitted Sarnafil to their north aisle roof!

“Do either of you know anything about this? I certainly don’t.

“Did they just act unilaterally, or do they have any kind of consent? They seem to be describing the plastic as “temporary” – although as the life of this stuff is at least 20 years, this seems to be stretching the usual definition of the word somewhat!”

25. I share Mr Martin’s doubt as to what Mr Watts means by describing the work as “temporary repair”.

26. One of the merits of Sarnafil was evidently that it had a 20-year guarantee. That guarantee was duly issued on 16 October 2017 and it makes interesting, although not easy, reading. Its general assertion that “if within 20 years...the materials are proved to be defective”, or if there is a defect “in the installation of the materials” there will be appropriate compensation or repair. But it had important provisos and conditions which I summarise as follows:

- (a) Sarnafil’s aggregate liability will not exceed £10,000.
- (b) There will be no liability for any damage to the building or its contents, other than “the fabric of the roof”.
- (c) The materials must have been installed “strictly in accordance” with the instructions.
- (d) Any defective materials must be reported “as soon as the defect is, or should reasonably have been, discovered e.g. after adverse weather or an annual inspection”.
- (e) In addition, there must be roof inspections at least every five years, to be “carried out” by Sarnafil’s applications department and any remedial works found necessary must be carried out by them.
- (f) “The life to first maintenance of Sarnaplast mastic sealant is ten years”.
- (g) “Sarnaplast silicon mastic sealing to upstands or other details may need replacing as the joints fatigue or weather, after ten years”.

27. I certainly would not describe this guarantee as worthless, but two of the provisos alone, the limit of £10,000 and the exclusion of damage (e.g. rot) anywhere except in the roof itself, certainly reduces its value.

28. The total cost to the PCC of the Sarnafil works was £12,061.20 including VAT.

29. On 23 October 2017, the present Petition was presented, claiming (as I have mentioned) retrospective approval of the work. In effect it raised two questions:
- (1) Should the work have been permitted, if a petition had been presented for approval before the work had been done? and
 - (2) What the court should order, granted that the work has been done?
30. My initial view was that this was a case which certainly required a public hearing, as much as anything to ascertain what had gone so badly wrong. I gave directions for evidence accordingly.
31. Mr Watts gave a witness statement in the form of a time-line, as I have mentioned, and this was helpful. Doubtless he neither took legal advice nor fully understood the procedure of the court. What he does not explain, however, is why, during the period from March to October 2017, he never instigated a petition which he knew was needed before the work was done.
32. His co-petitioner is the Reverend Peter Hooper, who has been the Area Dean since February 2012, and consequently stands in the position of incumbent. He says that he was “totally unaware” of the PCC decision to commission the installation of the replacement roof, and he cannot condone it. He says, however, that he is “more than happy” to support the use of Sarnafil.
33. The third supporting witness statement is that of Emma Robarts who states that she lived at Great Hornead in Hertfordshire in the diocese of St Alban’s, where the church was evidently permitted (on an unopposed petition) to re-roof its

aisles with Sarnafil. She says that her parish's proposal to use Sarnafil was "challenged in what felt like a war of attrition". She says that she had to give up taking the Sunday school because she was spending so many hours of her time "contacting other churches to research their roof replacement experiences". She says that she does not know Mr Martin Watts personally, and does not suggest that she has ever been to Pickwell. Her evidence is valuable as indicating the strength of feeling that these issues seem to raise in some minds:

"31. If there is a rebuke to be made to the Pickwell PCC, whose action was hardly precipitate and one imagines was borne of frustration, then a greater rebuke is perhaps due to the DAC and HE representatives whose handling of the matter delayed application for the Faculty...".

This is simply wrong. It was certainly "precipitate" for the PCC to re-roof the north aisle before they had even applied for a faculty. In no way did the "DAC and HE representatives" delay the matter. Perhaps the best that can be said for Mrs Robarts is that she did not know the facts of the present case. If so, she should not have put her name to the witness statement that she did.

34. Another supporter of the actions of Mr Watts or the PCC , who states that she is or has been a solicitor, but whom I shall not name, wrote a letter to me dated 29th April 2018 stating that she was "astounded and appalled that the Church of England sees it as an appropriate course of action to vilify the PCC and bring proceedings in the Ecclesiastical Court." I do not know what vilifications she refers to. The only proceedings that I know of are not those of the "Church of England," but of Mr Watts himself, whom she evidently supports. Her strength of language is not supported by any accurate knowledge of the facts of the case.

35. The statements in opposition from SPAB and Historic England were moderate in tone and predictable. The latter echoed the view expressed in its handbook of June 2017 which I have quoted from. The gist of their objection is this:

- (1) The Sarnafil membrane is visually objectionable and “changing the material could detract enormously” from the significance of the Church.
- (2) Terne-coated stainless steel can be an acceptable alternative to lead, and noise “need not be an issue” if stainless steel is fitted with appropriate underlay. Alternative commercial underlays are suggested.
- (3) Synthetic non-metal products rely on adhesives and those require a very high standard of workmanship. This is important where the roof material must accommodate movement and avoid cracking and joints opening up. “Water penetration from the roof can be unnoticed in a building which is not regularly used and severe damage to important internal fabric as well as the timber roof structure can result. Repairing these can be significantly more than replacing the roof”.
- (4) By contrast, lead or stainless steel is virtually maintenance-free, and long-lasting.
- (5) “At present information about the performance of synthetic non-metal roofing systems is elusive, mainly because many are relatively new, but understandably there can be a reluctance to report problems or failures”.

(6) Even if Sarnafil is all that its manufacturers claim, and indeed has a 20-year life, 20 years is a short time in the life of a church building. To spend all the insurance money for the lost lead on a short-term solution merely imposes a new burden on the next generation. They will have a defective roof, but without insurance money to replace it with.

36. On 7 December 2017 the matter came before the DAC on a single question whether confirmatory approval should be given. Of the thirteen members present, ten were in favour, two against and one abstained. Accordingly, the Notification of Advice was to the effect that the DAC “does not object”, subject to two immaterial provisos.

DECISION

37. If I do refuse the application, I should logically order the Sarnafil to be removed and be replaced with a more suitable material.

38. I am not going to do so for the following reasons. First, it would be a waste of materials and money; I expect that the Sarnafil covering will be adequate for at least a number of years which have not yet elapsed. Secondly, I decline to decide what I might have ordered if a faculty petition had been presented in proper time, before the work was done, because

(a) I have no help on the point from the DAC: they have rightly advised on what should be done now, not what might have been done a year ago;

(b) I would be unlikely to disagree with SPAB and HE, who have considerable expertise and experience, without seeing expert evidence

which plausibly contradicts their views and in particular deals with the question of the noisiness of stainless steel on a roof. What is remarkable in this case is that although the Petitioners have on their side immense strength of feeling, I believe that I have seen no independent evidence at all supporting the claims of Sarnafil.

39. If the case had gone to an early oral hearing, these and other matters I would have explored. But for me to pursue such enquiries at an oral hearing today, would have turned the procedure into an inquisitorial one, and I would have to be the inquisitor. Since the two amenity societies declined to take part as the parties' opponent, there would be no-one else. I could perhaps have directed that the Archdeacon should appoint Counsel to oppose the petition, but that would be expensive, and I would hardly be acting neutrally. Furthermore, I have already mentioned that feelings have been running high in this case, and a bad-tempered oral hearing would do no good to anyone. Most important, perhaps, the essential facts of the whole case are adequately clear for me to resolve the issues that I actually have to resolve, without further pursuit of more background information or investigation of what I might have decided about the work if it had not already been done.
40. Taking these matters together, and because the matter was technically unopposed, I changed my mind about the expediency of an oral hearing and made an enquiry under Rule 14 Faculty Jurisdiction Rules 2015 whether the Petitioners would be content with all matters to be dealt with on written representations. They assented and I directed accordingly.
41. So what is to be done?

42. Rachel Broomfield, the SPAB Places of Worship Case Work Officer, suggests in her letter of 29 January 2018 “that the Sarnafil should not be a permanent replacement roof covering but can be left in place for now as a long-term temporary measure. However we would expect the church over the next few years to work towards finding a more appropriate permanent solution...”.
43. The proposal of Historic England is a little more severe. I quote from the letter of 1 February 2018 from Janine Dykes, the Inspector of Historic Buildings and Areas:
- “If the Chancellor is minded to grant consent it should only be granted for a period of 5 years. Following this the PCC should be required to remove the Sarnafil roof covering and replace it with an appropriate roof covering such as lead, terne-coated stainless steel or other sheet material...”.
44. It seems to me that it would be wasteful to order the removal of the Sarnafil after only five years, if at that time it is functioning perfectly satisfactorily.
45. My conclusion is therefore that the roof should remain for the rest of its natural life, but should be inspected and maintained during that period with the greatest care, to avoid the possibility (or ultimately likelihood) that it will start leaking, and damage to the Church ensues, and to ensure that the guarantee conditions are complied with.
46. I will also direct that when the roof needs to be replaced, its replacement material should be decided by myself or my successor, and there should be no presumption that because Sarnafil is already there, then Sarnafil should be used in the future. Perhaps that course will then be advisable but it shall not be a foregone conclusion.

47. I turn now to the costs.
48. If the churchwardens and PCC had heeded the sensible advice given to them by the DAC in March 2017, and taken advice from their own architect, they might have adopted a proposal that was non-contentious, such as the use of zinc or sound-insulated terne-coated stainless steel. They might have learnt that I regularly grant emergency faculties where lead roofs have been stolen, and the matter is disposed of in days rather than months.
49. Of course any parish is free to ask for any reasonable alternative roofing material to be used, and it was perfectly open to Pickwell to seek permission for the use of Sarnafil. Had they done so, I might well have allowed their application, particularly if it were to be accompanied by some outside expert support for Sarnafil. But SPAB and HE would have opposed, and there would have been a need for a proper investigation into the Sarnafil question, and delay of some months.
50. Whatever conclusion I reached I would almost certainly have ordered the costs to be borne by the Church's own funds in the usual way.
51. Mr Watts was the driving force behind the decision to go ahead with the Sarnafil option without faculty approval. As a consequence of it, I have not decided the question whether Sarnafil will normally be an acceptable option. I have only been able to decide what should be done in the circumstances created by Mr Watts's behaviour.

52. I therefore intend to order that Mr Watts should pay the costs of the proceedings personally. He may not take a contribution or indemnity from the PCC or from any other church funds. If he is right in his contention that he was supported thoroughly by the PCC, then the individual members of the PCC are at liberty to make their own voluntary contributions towards his debt.
53. But because he may not have expected me to deal with costs in this judgement, I will allow him a short time to make a written submission to me as to why a different order should be made. I direct that such a representation should reach the Registrar before 4.00 pm in Friday 22nd June 2018.
54. I will ask the Registrar to quantify the costs payable under The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2017 as soon as possible.
55. I will also draft an Order as soon as the question of the costs is final.

Mark Blackett-Ord
Chancellor
18 July 2018

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